BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TERESSA ARMSTRONG	)	
Claimant	)	
VS.	)	
	)	Docket No. 256,209
TWIN OAKS HEALTH CARE	)	
Respondent	)	
AND	)	
	)	
CONTINENTAL NATIONAL AMERICAN GROUP	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the September 5, 2001 preliminary hearing Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery.

ISSUES

Claimant requests workers compensation benefits for the repetitive trauma she allegedly sustained to her right foot while working for respondent, which culminated in a stress fracture on or about May 10, 2000.

After conducting a preliminary hearing on August 24, 2001, which was the second preliminary hearing held in this claim, Judge Avery entered the September 5, 2001 Order, in which the Judge found that claimant's work activities contributed to the stress fracture in claimant's foot. The Judge stated, in part:

> . . . the court initially and today continues to believe that the length of claimant's shift, her job duties together with the fact that she was compelled to walk on concrete floors during her lengthy shift contributed to the fatigue and ultimate stress fracture of claimant's foot. That is the opinion of the treating physician as well. . . .

Accordingly, the Judge ordered respondent and its insurance carrier to provide claimant with medical treatment.

Respondent and its insurance carrier contend Judge Avery erred. They argue claimant failed to prove her injuries arose out of her employment. They also argue that

claimant failed to present any new evidence at the second preliminary hearing and, therefore, the Board should deny claimant's request for benefits as it did in an earlier appeal.

Conversely, claimant contends the preliminary hearing Order for Medical Treatment should be affirmed. Claimant argues she has proven that she has sustained repetitive trauma to her feet and lower extremities from her work activities, which required working double shifts and constantly standing or walking on concrete floors. Accordingly, claimant contends she has proven that her injury arose out of her employment with respondent. Further, claimant contends she presented new evidence at the August 24, 2001 preliminary hearing in the form of a May 24, 2001 letter from claimant's treating physician, Dr. Brian K. Ellefsen.

The only issue before the Board on this appeal is whether claimant has sustained personal injury by accident arising out of and in the course of employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. The September 5, 2001 preliminary hearing Order should be affirmed.

2. On approximately May 10, 2000, after working 10 hours of a 16-hour double shift, claimant heard her right foot pop while walking down a hallway.

3. The Board finds and concludes that claimant's work activities caused repetitive trauma to her feet and ultimately caused a stress fracture in her right foot. That conclusion is based upon the evidence that claimant normally worked double shifts, or 16-hour shifts, and that claimant's job as a certified nurse's aide required her to be constantly on her feet. That conclusion is also supported by the opinion provided by claimant's treating physician, Dr. Brian K. Ellefsen, who surgically treated claimant's right foot, removing a fractured bone. In his May 24, 2001 letter, the doctor wrote, in part:

> I wanted to make it clear that I am very familiar with the work requirements of a Nurses Aid[e], having been in private practice nine (9) years and hospital work where I have observed the duties of a Nurses Aid[e] closely, as well as visiting many of the local Nursing Homes, where the Nurses Aid[e]s are doing the majority of the work.
>
> It is my professional medical opinion, with a reasonable degree of medical certainty that **Mrs. Teres[s]a Armstrong's job activities, which required her to squat, knee[l] and stoop, resulting in hyperextension of the MP joint which caused a stress fracture of the medial sesamoid bone, over time from repetitive trauma which resulted in the fracture of the medial sesamoid bone, on or about May 10, 2000** which required the treatment

> she had at the time that she saw us and the surgical intervention which was ultimately the excision of her medial sesamoid bone of her great toe at the level of the MP joint of her right foot.
>
> . . .
>
> . . . **Once again, I do not feel it was the walking down the hallway in May of 2000 that caused the medial sesamoid fracture. It was the repetitive micro-trauma resulting in a stress fracture to the medial sesamoid of her right toe** that occurred first and the date of May 10, 2000 was simply the date in which this became a fracture of the medial sesamoid which resulted in her pain, causing her to ambulate on crutches and essentially non-weight bearing for a period of nearly one (1) year prior to her surgical intervention. (Emphasis added.)

4. At this juncture of the claim, the Board is persuaded that claimant's lower extremity injury was directly caused by the work activities that she performed for respondent. Therefore, the Board concludes that claimant's injuries arose out of her employment and, accordingly, this claim is compensable under the Workers Compensation Act.

The Board is mindful that at the first preliminary hearing held in January 2001 respondent and its insurance carrier presented a November 9, 2000 letter from orthopedic surgeon Dr. Greg Horton and that the doctor wrote that he did not relate claimant's foot problem to her work. But the Board also notes that Dr. Horton thought that claimant possibly had a ruptured tendon instead of the fractured medial sesamoid, which was the actual diagnosis as later confirmed by Dr. Ellefsen during surgery. Further, Dr. Horton's letter does not address repetitive trauma in any manner or whether claimant's injury may have been caused, or contributed to, in that manner.

WHEREFORE, the Board affirms the September 5, 2001 Order for Medical Treatment entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director